Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE,
FRANK UNANUE, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey

PETITION FOR A WRIT OF CERTIORARI

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February 1, 1999

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QUESTIONS PRESENTED

1. Whether the New Jersey courts below violated the due process clause of the fifth or fourteenth amendment when they entered judgments against petitioner when he had not been and was not a party or a party in interest and moreover had not been given any notice that a judgment could be rendered against him.

2. Whether New Jersey is obligated by the full faith and credit clause of the United States Constitution to give effect to the Civil Code of Puerto Rico on matters governed by such laws, as they relate to its family laws, fundamental public policies, forced heirship, legal partnerships of gains and contracts.

3. Whether, unless the bankruptcy court orders otherwise, upon dismissal of a bankruptcy case, any orders or judgments against the bankruptcy estate are without force and effect. Furthermore, the supremacy clause requires that a judgment of the U.S. Bankruptcy Court, be given Full Faith and Credit.

PARTIES TO THE PROCEEDING

Ulpiano Unanue-Casal, a/k/a Charles Unanue was not a party in the proceeding below but is the petitioner in this petition for a Writ of Certiorari to review the final judgment rendered below against him personally and interlocutory decisions below made final and appealable by that final judgment, notwithstanding that he was neither a party or a party in interest and was in bankruptcy during the proceeding.

The parties to the proceeding below were plaintiffs Goya Foods, Inc., Joseph A. Unanue and Frank Unanue, individually, as executors of the will of Prudencio Unanue, as trustees of an *inter vivos* trust created by Prudencio Unanue and as trustees of sixteen trusts thereunder, and the beneficiaries of said trusts, Robert Unanue, Mary Ellen Yorio, C. Randall Unanue, Joseph F. Unanue, Thomas Unanue, Mary Carmen Norris, May Ann Unanue, Mary Louise Unanue, Theresa Elizabeth Devir, Francisco R. Unanue, Mary Isabel Unanue, Carlos A. Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue and Jorge E. Unanue; and Carol Ann Unanue-Freeboarg; and defendant, the bankruptcy estate of Charles Unanue.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of ceriorari issue to review the judgment of the Supreme Court of the State of New Jersey issued on November 5, 1998 and the decisions below.*

OPINIONS BELOW

The judgment of the Supreme Court of the State of New Jersey entered on November 5, 1998, denying Petitioner's petition for certiorari has not been reported and is reprinted in the appendix of the Petition of the Bankruptcy Estate of Ulpiano-Casal a/k/a Charles Unanue (hereinafter "BE appendix"), p. 2a *infra.*

The order of the Appellate Division, New Jersey Superior Court, denying both Petitioner's petition for re-

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* Because of the similarity of this case and the Petition for Writ of Certiorari filed in the Bankruptcy Estate of Ulpiano Unanue-Casal, a/k/a Charles Unanue, Petitioner v. Goya Foods, Inc., et al., Respondent, the Clerk of this Court has granted this Petitioner use of that Appendix.

hearing, filed on June 9, 1998, has not been reported and is reprinted in the BE appendix, p. 12. *infra.*

The opinion and judgment of the Appellate Division decided on May 19, 1998 is reported at 311 N.J.Super 589 (App. Div. 1998), and is reprinted in its original form in the BE appendix, p. 3a. *infra.*

The opinion of the Chancery Division of the New Jersey Superior Court entered on November 19th, 1993 is reprinted in the BE appendix at p. 128a. The Order of the Chancery Division, dated November 19, 1994, is reprinted in the BE appendix at p. 178a. The Opinion of the Chancery Division, dated March 28, 1994, is reprinted in the BE appendix at p. 181a. The Opinion of the Chancery Division, dated February 23, 1995, is reprinted in the appendix at p. 200a. The Judgment and Reference to Special Master of the Chancery Division, is reprinted in the BE appendix at p. 214a. The Final Judgment of the Chancery Division, dated February 23, 1995, is reprinted in the BE appendix at p. 211a.

The abridged version of the opinion and order of the Honorable Martin L. Kole, New Jersey Superior Court, entered on December 4, 1991, is reported at 244 N.J. Super 362 (Law Div. 1991), and a complete version is reprinted in the BE appendix at p. 14a. *infra.* The Order of Judge Kole, dated December 4, 1991, is reprinted in the BE appendix at p. 222a.

JURISDICTION

On appeal, Petitioner asserted at page 9 of its brief on appeal number A-4130-94T3 that the duplicate final judgment of the Chancery Court which was entered against him individually, was error, because he was neither a party or a party in interest and moreover was not noticed at any time prior to the rendition of the judgment against him in further violation of Due Process which is guaranteed by the 5th and 14th Amendments to the Constitu-

tion These matters were further addressed and preserved in pages 5 to 8 of the reply brief. The Appellate Division affirmed the orders below.

On petition to the New Jersey Supreme Court, the issues of due process were presented but the New Jersey Supreme Court declined to review.

The jurisdiction of this Court to review the opinion and judgment of the New Jersey Supreme Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitutional amendment V.

> No person shall . . . be deprived of life, liberty or property, without due process of law.

U.S. Constitutional amendment XIV, Section 1.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article IV, Section 1.

> Full Faith and Credit shall be given in each State to the public Acts, Record, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

U.S. Constitution, Article VI Clause 2.

> This Constitution and the Laws of the United States which shall be made in pursuance thereof, and all

Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

48 U.S.C. § 733a.

All citizens of the United States who have resided or who shall after March 4, 1927 reside in the island for one year shall be citizens of Puerto Rico.

28 U.S.C. § 1738.

The Acts of the legislatures of any State, Territory or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of that court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

11 U.S.C. § 349(b)(2), (3).

Unless the court, for cause, orders otherwise, a dismissal of a (bankruptcy) case vacates any order, judgment or transfer ordered and revests the property of the estate in the entity in which such property was vested immediately before the commencement of this case under this title [1 USCS §§ 101 et seq.].

BACKGROUND OF THE CASE

Prudencio Unanue-Ortiz ("Prudencio"), father of petitioner and respondents Joseph and Frank Unanue made legal entry into the United States, at San Juan, Puerto Rico, from St. Thomas, on February 14, 1904. In 1908 he moved to San Lorenzo, a small town in Puerto Rico and established a dry-goods store there.

In 1911 Augusto Prudencio Falero ("Augusto"), who was given the name "Prudencio" at his baptism and used his mother's surname of Falero, was born out of wedlock, in San Lorenzo and was the natural son of Prudencio. Augusto is an heir of Prudencio by force of law pursuant to 31 LPRA § 2361.[1] In the same year that Augusto was born Prudencio became engaged to marry Carolina Casal-Valdes ("Carolina") the granddaughter of the largest landowner in the region who had been the head of customs, for Spain. Carolina and Prudencio were citizens of Spain that grew up in Puerto Rico.

In 1921 Prudencio and Carolina were married in San Lorenzo, Puerto Rico. Under the Art. 1315 of the Civil Code of Spain, which applied to all its citizens, as well as § 1282 of the Civil Code of Puerto Rico, which became effective on July 1, 1902 by order of the U.S. Congress (currently, 31 LPRA § 3551) a legal partnership of gains and acquest, known in the official translation into english as a "Conjugal Partnership" was created on the day of the marriage as a juridical entity with a personality of its own that would, as long as the marriage existed, be a separate entity, distinct from the spouses that compose it. The Conjugal Partnership would be the owner of all of the gains in the assets of the married couple, irrespective of any subsequent changes in the residence, domicile, or citizenship of either or both of the spouses.

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[1] The Hon. Judge Kole who presided over the 171 day plenary hearing in New Jersey made the finding that Prudencio believed that Augusto was his son, by Ramona. (BE appendix at p. 35a.) A subsequent DNA test has proven that Augusto is the half-brother of Petitioner.

In 1922 Petitioner was born of that marriage, also in San Lorenzo, and became an heir of his parents by force of law, having a right to a legal portion of the property of the Conjugal Partnership, and of the estate of the survivors of the marriage, forever reserved for him, pursuant to Section 794 of the Puerto Rico Civil Code of 1902 (now 31 LPRA 2361).

In late 1923, or early 1924, Prudencio went to New York in search of employment and was followed, later in 1924, by his wife and son, Ulpiano a/k/a Charles, the petitioner herein, as required by 31 LPRA § 283, obligating the wife to obey her husband and follow him to wherever he chose to reside. In 1926, Prudencio started a business as sales agent and representative of Spanish food exporters and shippers. He brought Augusto to New York to work for him as a clerk. While employed by Prudencio, Augusto had a mental collapse and has since then been mentally incapacitated, although his memory and ability to speak the english language remained unimpaired. Prudencio then sent him back to his mother, Ramona Falero, in Puerto Rico and throughout his life, sent her $5.00 and later $10.00, every week for his care. Ramona's pleadings to Prudencio to have him recognize Augusto as his son were always refused and she was threatened, by Prudencio, with a discontinuance of the $10.00 weekly stipend and with the use his company's lawyers, to oppose whatever claim she could make, if she ever took legal action to have their son recognized as his natural son.

In 1936 the Civil War broke out in Spain and the shipments from Spain to the United States were no longer possible. An additional business which Prudencio had started some years before, with a partner, in New York, to assemble and sell Credium brand AM Radio Receivers, failed at about the same time and Prudencio was obliged to file personal bankruptcy.

While in bankruptcy, Prudencio started an ethnic oriented wholesale grocery business with the entire funds

provided by his wife Carolina from her inheritance. It was that small wholesale grocery business which evolved into Goya Foods, Inc. ("Goya") the exclusive owner of the GOYA brand, an ownership which gave it control of the entire conglomerate of affiliated related companies (the "Goya Companies") that were, and are, dependent on the heavily advertised and promoted GOYA brand for their profitable existence. The Goya Companies were founded and grew over the years without any funding other than what had been originally provided by Carolina when Prudencio was in bankruptcy.

In 1946 Don Prudencio incorporated the wholesale grocery business as Unanue & Sons, Inc. He had 48 of the total of 101 issued shares of stock issued equally to his four sons with Carolina and had the other 53 shares, issued nominally to himself as administrator of the Conjugal Partnership, in compliance with 31 LPRA § 284.

In 1947 petitioner graduated with degrees in engineering and joined the family wholesale grocery business, which even with the addition of a small food packing plant, had weekly sales averaging only $6,400.00. One year later Prudencio discovered that his trusted employee and manager had been stealing and dismissed him. After some discussion and threatening to leave, the petitioner became the new manager.

In 1949 Puerto Rico Food Products, Corp. was formed to purchase a small bankrupt cannery in Puerto Rico. To avoid estate taxes, Prudencio ordered that all of the shares in the new corporation be issued equally to his four sons with Carolina, including Petitioner. Prudencio later admitted that the main reason that he would not have stock in Goya's affiliated companies was because of the forced heirship laws of Puerto Rico, Augusto would be entitled to a share under the forced heirship laws of Puerto Rico and cause money to be taken out of the business, after his death.

Prudencio, as administrator of the property of the Conjugal Partnership, held the majority of the shares of

stock and control of the business that owned the Goya brand, the foremost advertised Spanish brand. He thus held the control of all affiliated companies that were dependent on the Goya brand. However, until his dismissal, virtually all major business, policy and operational decisions were made by Petitioner, with Prudencio's consent or during his absence.

In 1949 Petitioner applied for and obtained a full tax-exemption grant from the Puerto Rican government for Puerto Rico Food Products Corporation so that its entire corporate profits could be used for the growth and development of the company.

In 1952 came the first major expansion of the Puerto Rico operations. Petitioner moved to Puerto Rico to oversee design and construct an entirely new and modern plant in Bayamon, Puerto Rico, for Puerto Rico Food Products Corporation. After the factory was built and commenced operations, Petitioner's brother, Joseph Unanue was moved to Puerto Rico and Petitioner was again based in New York.

In 1958, a new and modern headquarters and warehouse facility was built in the Red Hook section of Brooklyn, near the piers where products from the cannery in Puerto Rico and from foreign countries arrived. In 1961, without objection, Petitioner changed the name of Unanue & Sons, Inc. to Goya Foods, Inc. In 1962, with the tax-exemption of Puerto Rico Food Products Corp. expiring, Petitioner again moved to Puerto Rico to form a new tax-exempt corporation, Caribbean Canneries, Inc. ("Caribbean") and build a new plant which would be four times the size of the still new and modern Puerto Rico Food Products' cannery.

In the three years, from 1962 to 1965, that it took to build the Caribbean facility and to create a new sales force and an advertising agency there was a 2,000% increase in sales, in the Puerto Rico business, and an even

larger increase in the net profits of the Puerto Rico operations. The big increase in sales and profits in Puerto Rico made up for the reduction in the customary annual increase of sales and profits in the New York operations, during the time that Petitioner was based in Puerto Rico.

In June 1964, Prudencio and his other three "recognized" sons engaged Atty. Samuel L. Siegel (Siegel) as personal tax advisor for Prudencio and as corporate counsel for Goya and the affiliated companies (the "Goya Companies").

In 1966 Prudencio called for a meeting with his four sons at Siegel's office, and made known to them the existence of Augusto. He said that Augusto, was his son but was mentally incapacitated and living with his mother in Caguas, Puerto Rico, and informed his sons that he was sending $10.00 every week for his support. He said that he did not want Augusto to share in his estate because it would take capital out of the business and that posed a problem because of the mandatory inheritance (forced heirship) laws of Puerto Rico. Siegel said that at Prudencio's request he had worked out a plan which would reduce the book value of the 53 shares of Goya (held nominally by Prudencio) substantially reducing what would have to be paid to Augusto and the taxing authorities upon the death of Prudencio or Carolina.

SCHEMES AND CONSPIRACIES

Under Siegel's plan, agreements were executed between the four sons of Prudencio and Carolina that all would have an equal ownership in the Goya Companies, irrespective of record ownership. Petitioner would sell his 25% ownership in Caribbean, to Caribbean while retaining his full ownership through a 25% interest in the remaining shares held by his brothers. With the proceeds, 1,250 non-voting shares of Goya, representing a 92% ownership interest in Goya, were issued nominally to Petitioner, lowering the book value of the property of the

Conjugal Partnership and of the future estate of Prudencio by more than 90%, in a deal that Siegel assured all was entirely legal as the result of his expertise.

In 1968, petitioner reviewed trial balances of Goya and of its affiliates in Puerto Rico, prior to their fiscal year end and found that they had a negative physical inventory, that is—less than zero—notwithstanding that the warehouses were full of merchandise. That led to the discovery that substantial quantities of product had been shipped by Goya, free of charge to tax-exempt Caribbean so as to evade the payment of taxes to the IRS and furthermore that the net profits had been understated by an additional $2,500,000 in the 1968 fiscal year, by lowering the reported physical inventories by that same amount.

Petitioner confronted his brothers with his discovery of the tax evasion which he considered to be a form of thievery, morally wrong, and an endangerment to them all, which furthermore put the tax exemption grants on the businesses in Puerto Rico at risk of being canceled retroactively and imperilled all of the Goya Companies. It is unrefuted that petitioner told his brothers that he would not remain locked into such an illegal situation and that unless they corrected the situation by reporting and paying taxes on all the unreported profits, he would report the wrongdoing to the U. S. Attorney General, and travelled to Washington, D.C. to do so. Only then did Charles' brothers agree to report all of the hidden profits at the next fiscal year end tax returns and offered Charles an option to sell his entire ownership interest in the Goya Companies, to them, as a guarantee that they would fulfill their promise to cease their wrongdoing.

When petitioner's brothers reneged on their agreement, just before the next fiscal year end, told him that the tax fraud as well as the fraud against their mother and Augusto would continue and that he would be the scape goat if it were discovered by the authorities, which caused Peti-

tioner to make a public disclosure of the situation in a press conference. He was immediately dismissed and left without liquid assets on income. As further punishment or revenge and for the personal benefit of his brothers, the Goya Companies, which became the *alter egos* of Petitioner's brothers, were used and continue to be used, along with the various judicial systems to take Petitioners inheritance, his 24% ownership interest in the Goya Companies as well as his share of the taxable and tax-exempt corporate dividends, and to attach *ex parte* and appropriate after denial of trial by jury, all of the real property of Petitioner's wife, in order to restrict her ability to support her husband and to fund the litigation.

After the public disclosure by petitioner, taxes, interest and fraud penalties were paid by the corporations for the transfers that had been made to tax-exempt affiliated corporations in Puerto Rico, but neither taxes nor penalties were assesed on the larger amount of hidden profits in the unreported physical inventories.

After the death of petitioner's mother, Carolina, in 1984, who had bequeathed to petitioner and his three brothers, equal shares of her estate, petitioner learned that an *in futuro* waiver of his right to inherit from his father was a nullity and sent a letter to his two brothers—one brother had died—who were also citizens of Puerto Rico and the executors of their parents' wills, asking for his share of the estates of their parents.

The additional problem that confronted petitioner's brothers was that petitioner's claim to a 24% share of the estates of his parents is over 300 times greater that what was reported to the various taxing authorities as the value of the combined estates. A further problem was that the taxing authorities in Puerto Rico were informed by petitioner's brothers that their mother was domiciled in New Jersey. While in New Jersey, the same individuals reported that their mother was domiciled in Puerto Rico.

As a result no taxes were paid anywhere on the estate of petitioner's mother and less than $400,000 was paid on the estate of his father. When petitioner's mother passed away in 1984, the value of her half interest in voting control of the Goya Companies was over $200,000,000.00.

The request of petitioner, to his brothers in Puerto Rico, for his share of the estates of their parents, resulted in a 171 day bench trial in New Jersey, which was initiated in the New Jersey Chancery Court by petitioner's brothers and paid by the corporations. The New Jersey action asked for a determination that the domicile of their father had been New Jersey at the time of his death in Puerto Rico.[2] The cost of petitioner's participation at the bench trial and the *ex-parte* attachment of some of the real properties of petitioner's wife, restricted her access to funds and her willingness to pay all of her husbands debts and forced petitioner to file a Chapter 7 bankruptcy petition, in Puerto Rico, where he was domiciled and a citizen.

The initial five years of acrimonious litigation ceased when petitioner capitulated and, in Puerto Rico, where all of the stockholders, directors and partners of the family business were residents and citizens, signed the "1974 Amendment," an amendment to a previous agreement that had been defaulted by the Goya Companies. In the 1974 Amendment, in addition to other concessions and the cancellation of the required initial public offering that was to

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[2] Petitioner's father and mother were naturalized citizens of the United States. As found by the New Jersey court, they had voluntarily resided in Puerto Rico, without leaving the island, during the last 5-1/3 and 14 years of their lives, respectively. Pursuant to 48 U.S.C. § 733a, both were citizens of Puerto Rico. However, the New Jersey court decided that petitioner's father was domiciled in New Jersey, when he died in Puerto Rico and moreover that petitioner had no right to inherit from his mother, who was not before the New Jersey court, because New Jersey did not recognize, or give Full Faith and Credit to legally constituted partnerships of gains (Conjugal Partnerships), organized under the laws of Puerto Rico.

be made under S.E.C. rules, of all of petitioner's ownership in the Goya Companies, petitioner waived his right to the future inheritance from his father (though not his mother) and the inclusion of a penalty clause that in any future litigation between any of the parties to the 1974 Amendment *on any matter*, irrespective of who initiated the law suit, the loser would be obliged to pay to the successful party, twice all the legal fees as well as all other expenditures incurred in the litigation (the "Penalty Clause").

In 1987, three years after the death of petitioner's mother and after not receiving any part of his inheritance from his mother's estate who had bequeathed to petitioner an equal 25% share of her substantial estate, petitioner was reliably informed that, pursuant to the applicable family law of Puerto Rico, the *in futuro* waiver of his right to inherit from his father was entirely invalid *ab initio*. Debtor wrote to his surviving two brothers (one had died), asking for his own share of the inheritance from both the estates of their parents, which they controlled, as the executors. The request resulted in the 171 day bench trial in the New Jersey Chancery Court which, after the attachment of some of the independently owned real property of petitioner's wife, exhausted the limited resources then available to petitioner's wife, and forced debtor to file the bankruptcy petition, in the U.S. Bankruptcy Court for the District of Puerto Rico.

Two of the family corporations, Goya and Goya de Puerto Rico, Inc. then pursued petitioner in the bankruptcy court where they were not scheduled creditors and demanded 2004 examinations of both petitioner and his wife. In order to obtain the required standing to participate in the inquest, the two corporations, (collectively "the Goyas") filed contingent proofs of claim totaling $6 million, based solely on the Penalty Clause, with no substantiation whotsoever. The Goyas contingent claims were soon afterwards increased to $20 million, also without substantiation.

The bankruptcy court, on petition from the Goyas to annul the automatic stay on the New Jersey proceedings, and without objection from petitioner to modify, but not annul, the automatic stay [3] so as to permit only the completion of the bench trial on the limited issue of the domicile of petitioner's father, modified the stay, but denied the petition to annul the stay completely. The Goyas did not appeal the decision.

A Complaint objecting to petitioner's discharge was then filed jointly by the court appointed Chapter 7 trustee ("Trustee") and the Goyas. A second Complaint was filed by the Goyas, acting "for and on behalf of the Trustee" to set aside fraudulent conveyances, alleging, without any substantiation, that petitioner had an ownership interest in his wife's property. The Goyas then posted a bond and succeeded in attaching all of the real property petitioner's wife, without an evidentiary hearing.

The Complaints, together with petitioner's and Trustee's pending objection to the Goyas' claims, were consolidated in an adversary proceeding, into which was added a counter claim filed by petitioner.

The court appointed Chapter 7 Trustee then informed the court that all of the Goyas' claims were fraudulent, but he did not withdraw the unsubstantiated complaints which he had filed jointly with the Goyas, nor the petition for the attachment of the real property of petitioner's wife.

An interlocutory finding was thereafter made by the New Jersey court that debtor's father, who had died in Puerto Rico, after voluntarily residing there for the 5⅓ years immediately prior to his death in Puerto Rico, was domiciled in New Jersey at the time of his death. The

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[3] Petitioner did ask as a condition for not objecting, that he be given a free transcript of the proceedings in the 171 day bench trial in New Jersey, which Goya had paid for and obtained at the end of every day of the trial, but the request was denied.

court also held that 48 USC § 733a pursuant to which petitioners father was a citizen of Puerto Rico and could not be a domiciliary of New Jersey at the same time, was irrelevant.

The Goyas then again petitioned the bankruptcy court to annul the stay on the uncommenced proceedings in New Jersey. At the hearing, petitioner made an oral motion for non-suit, thorough counsel, which the bankruptcy court granted, finding, in essence, that no new evidence had been presented to warrant the further lifting of the stay, after the first hearing in which the court's final judgment denying the Goyas' petition for the annulment of the automatic stay, had not been appealed. The judgment of the bankruptcy court denying the annulment of the automatic stay on proceedings that had not commenced in the New Jersey state court, was appealed to the U.S. District Court for the District of Puerto Rico.

Immediately after the interlocutory decision of the New Jersey court, the Trustee of the bankruptcy estate of petitioner, was substituted for the petitioner as the only party defendant and party in interest in the New Jersey proceedings, not withstanding that the bankruptcy court, as a further reason to annul the automatic stay on the uncommenced proceedings in New Jersey, had said that because the Trustee had a full time law practice in Puerto Rico, no one would be available to defend the interests of the bankruptcy estate if proceedings were held in New Jersey.

Afterwards, the bankruptcy court issued an Opinion and Order severing the Objection to Claims from all other issues in the consolidated adversary proceeding, for an early resolution of that threshold issue, and staying all other matters. The bankruptcy court later stated its belief that the resolution of the Objection to Claims would probably resolve all other pending issues and ordered that a previously scheduled joint pre-trial report be limited to the issue of the objection to the Goyas' claims. The deci-

sion to hear and determine the long standing objection to claims, as was required by the Code, was also appealed to the district court and a stay pending appeal was requested.

The bankruptcy court then rendered a second Opinion and Order denying the stay pending appeal and ratifying its decision that it had severed, for prompt resolution, only the Objection to Claims, staying all other issues.

The bankruptcy court then sanctioned the Goyas for not participating in the joint pre-trial report as ordered, ordered discovery of the limited issues of the objection to claims to be completed by December 31, 1992 and scheduled a new pre-trial report. Those orders were complied with, as was a subsequent request for memorandum of law.

After two adjournments, on the eve of the trial on the objection to the Goyas' contingent claims, which the Trustee had reported were fraudulent, the district court reversed the decision of the bankruptcy court not to annul the automatic stay on the uncommenced proceedings in the New Jersey state court and in its judgment ordered that the record in the bankruptcy court be sent to the New Jersey state court, thereby precluding the bankruptcy court from holding its imminent hearing on petitioner's and Trustee's objection to the Goyas' claims, that was required by the Bankruptcy Code.

The decision of the district court, acting in its appellate capacity was appealed to the Court of Appeals and a petition was made for a stay pending appeal. The circuit court denied the stay pending appeal and affirmed the reversal of the bankruptcy court, thereby relieving the bankruptcy court of its obligation to adjudicate the long standing and well briefed objection to the Goyas' "fraudulent" claims.

The New Jersey Superior Court, immediately after the reversal of the bankruptcy court, which annulled of the

automatic stay on the New Jersey proceedings, hastily, without discovery and summarily rendered interlocutory Orders allegedly based on New Jersey laws: 1, That the 1972 Agreement and the 1974 Amendment, were valid and enforceable, notwithstanding that 11 of the 12 parties to the contracts were not before the court, that pursuant to the laws of Puerto Rico, where the contracts were signed, notarized and performed, the contracts were nullities and legally non-existent and that none of the contracting parties had any contacts with New Jersey; 2, That petitioner, had no right to any part of his mother's estate, notwithstanding that he had been bequeathed 25% of her estate in her will and moreover that he was inalienably entitled to ¼ of her estate pursuant to the forced heirship laws of Puerto Rico as well and; 3, That petitioner had no right to any part of his father's estate, notwithstanding that under the laws of Puerto Rico that applied to both petitioner and his father who were citizens of Puerto Rico, petitioner had an inalienable right, under the forced heirship laws as well as under the conjugal partnership laws of Puerto Rico to ⅕th of the estate of his father. (Augusto, who was his father's natural son, has a right to another ⅕th and to compensation for his abandonment during the 60 years, after his incapacity.

The New Jersey court then rendered, also without discovery or trial, a Final Judgment against the bankruptcy estate [4], of $6.9 Million, based on the Penalty Clause, for the legal expenditures of individuals opposing petitioners claims, who, were not parties to the 1974 Amendment which contained the Penalty Clause. The Final Judgment, moreover, made final and appealable all the previous interlocutory decisions against the bankruptcy estate. The judgments were appealed to the Appellate Division, which affirmed and a motion for reconsideration was denied. A

[4] Petitioner made application to the bankruptcy court to be permitted to represent his bankruptcy estate, *pro se*. The request was denied as being against the Code.

petition for certiorari was made to the New Jersey Supreme Court which decided not to review the matter.

Although the Trustee had not participated in any of the New Jersey proceedings and Petitioner had been substituted by the Trustee of the bankruptcy estate in 1991 prior to all the uncommenced proceedings in the Chancery Court and thereafter was not a party. On the day of the last bench hearing both Trustee and petitioner were contacted in Puerto Rico in a telephone call from the court. Without the filing of a complaint, notice or resubstitution, and petitioner's statements that he was not a party, plaintiffs requested and obtained an additional duplicate judgment against petitioner who was in bankruptcy without due process, for plaintiffs alleged legal expenditures.

The judgments against petitioner, individually were appealed to the Appellate Division, through counsel and when denied, petitioner made a *pro-se* motion for reconsideration which was also denied. The New Jersey Supreme Court decided not to review a *pro-se* petition for certiorari.

REASONS FOR GRANTING THE WRIT

I. THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENT PRECLUDE ALL OF THE DETERMINATIONS MADE BELOW.

The courts below entered judgment with respect to matters which had not been pleaded, and made determination without fair notice that it would rule on issues which had not been placed before it by the pleadings. The courts below have, therefore, come into conflict with a leading pronouncement by this Honorable Court of the principal of procedural due process. Such a conflict warrants the granting of certiorari under Supreme Court Rule 10(c).

The first such matter was with respect to claims that petitioner had with respect to the estate of his mother,

Carolina. No pleading brought before the court the claims which petitioner had against the estate of Carolina, who like petitioner, was a citizen of Puerto Rico. No pleading was brought to the courts below because the executors of her will, petitioner's brothers, certified to the New Jersey court that Carolina was domiciled in Puerto Rico. In Puerto Rico, where Carolina had resided without leaving the island during the last 14 years of her life, the same individuals certified to the authorities that Carolina was domiciled in New Jersey, at the house of her son Joseph, a residence that she had never seen. Her will was not probated anywhere, no part of her estate has ever been given to petitioner who like his brothers was bequeathed an equal ¼th. of her very substantial estate in her clear and unambiguous will. Of course, no taxes were paid anywhere.

Although petitioner was bequeathed an equal ¼th of Carolina's estate, the court, *on its own initiative*, in a proceeding in which petitioner was not a party, entered a judgment that petitioner was not entitled to any inheritance from Carolina's estate, without any notice, and irrespective of the fact that it did not have jurisdiction on the matter and without any opportunity for discovery and most certainly, without due process. Moreover, petitioner had no opportunity to request a trial by a jury of his peers, to which he would have been entitled in a suit at common law as guaranteed by the 7th amendment to the Constitution. There is no question that petitioner was also entitled to defend against the theft of his property but was denied the opportunity to do so.[5]

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[5] During all the summary proceedings in the Chancery Court, all of petitioner's assets, consisting almost entirely of his multi-million dollar claims for his inheritance and for about a 24% ownership interest in the Goya Companies and in the dividends declared after 1969, were in his Chapter 7 bankruptcy estate under the control of the Trustee, who, as the bankruptcy court had predicted, could not appear personally or through counsel in the New Jersey pro-

Not only did the court below take it upon itself to decide matters concerning Carolina's estate, which was not before it, but the court also transformed claims that were asserted against the undefended bankruptcy estate of the petitioner into a judgment against petitioner, individually, who was not a party or a party in interest in the proceedings, without any notice whatsoever to petitioner of any complaint or re-substitution as a party in the summary proceeding, seemingly with the objective that it could not be discharged by the bankruptcy court and would survive the bankruptcy case.

It was at the last hearing before the Chancery Court in the completion of the summary proceeding in which Trustee and petitioner, who were in Puerto Rico, were reached by telephone, that plaintiffs' counsel, without advance notice, asked the court to render an additional $6.9 Million judgment against petitioner, notwithstanding that he was not a party and had not received any notice that a judgment could be entered against him, personally.

The prejudicial effect of the $6.9 million judgment against petitioner, individually, was that entry of an unwarranted duplicate judgment which was intended reach what could be petitioner's post-bankruptcy assets, his multi-million inheritance and ownership claims.

For more than a century the central meaning of procedural due process has been clear. Parties whose rights are to be affected are entitled to be heard and defend their interests, and in order to make use of those rights, they must first be notified. *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556, 569 (1972) (quoting from *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233, 17 L.Ed. 531, 534 (1864).

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ceedings because he had a full time law practice in Puerto Rico which he could not abandon without substantial prejudice and the estate had no liquid assets whatsoever with which to hire a lawyer.

The protections of the constitutional requirement of due process are applicable to citizens of Puetro Rico through the application of the Due Process Clause of the Fifth Amendment, or the Due Process Clause of the Fourteenth Amendment. *Examining Board of Engineers*, 426 U.S. 572, 600, 96 S.Ct. 2264, 280, 49 L.Ed. 65 (1975).

The Court below in deciding matters without notice to petitioner, that the court would undertake to rule on matters that had not been brought before it by the parties, clearly denied due process to petitioner.

The court below wrongly intruded in affairs which Congress has committed to the Puerto Rico. In this matter, the courts of the State of New Jersey have taken it upon themselves to adjudicate matters between citizens of Puerto Rico, the petitioner and his mother, which were parties that were not before the court, on claims that were also not before the court and without notice to either of those citizens of Puerto Rico. This denial of due process is particularly appropriate for the granting of certiorari.

Equally deplorable is the entry of judgment against petitioner, when there was another, the bankruptcy estate which had been formally substituted into the action in 1991, and that the court was frequently reminded that petitioner, who was a senior citizen in his middle 70's was moreover, without counsel.

These events are not mere minor procedural mistakes by courts below, but are in fact major denials of the most fundamental concepts of Due Process which affect substantive rights of citizens of the United States and Puerto Rico. It exceeds anyone's sense of fairness, equity and due process for a foreign court to determine without notice the rights of U.S. citizens who are not before it.

The only credible reason for the request for a duplicate judgment against petitioner, personally, when he was not a party, was that plaintiffs intended not to bring the judg-

ment against the bankruptcy estate to the bankruptcy court for collection against the assets of the estate which were the multi-million dollar claims of petitioner.

However, the dismissal of the bankruptcy case, seven months later, can only mean that the bankruptcy court recognized neither of the judgments of the Chancery Court nor the $20 Million proofs of claim that the Goyas had filed, when they submitted themselves to the jurisdiction of the bankruptcy court. Both were objected to and the $20 Million claim was reported as fraudulent by the court appointed Trustee.

II. THE SUPREMACY AND THE FULL FAITH AND CREDIT CLAUSES OF THE CONSTITUTION PRECLUDE THE ENTRY OF THE JUDGMENTS BELOW

The courts of New Jersey denied Full Faith and Credit to the laws and fundamental public policies of the Commonwealth of Puerto Rico as they apply to its citizens, their personal property and estates that are governed by its laws, as well as to contracts and legal partnerships created thereunder.

In affirming the decisions below, the Appellate Division of the Superior Court of New Jersey, applied New Jersey laws to issues that are governed by the civil code of Puerto Rico and held that New Jersey "recognizes neither community property nor conjugal partnerships" (BE appendix —).

In doing so the courts of New Jersey have not only collaborated and or condoned the theft of hundreds of millions of dollars, in the instant case, but also the evasion of hundreds of millions of dollars of federal and commonwealth taxes. What is of even greater consequence, is that Respondents have established a virtually unassailable precedent for the theft of the property of most other legal partnerships and of estates that are governed by laws of other civil law jurisdictions, throughout the world.

The supremacy of 48 U.S.C. § 733a (All citizens of the United States that reside in Puerto Rico for one year or more, are citizens of Puerto Rico), makes Prudencio, Carolina and petitioner citizens of Puerto Rico at all relevant times.

31 LPRA § 9, provides: "The laws relating to family rights and obligations, or to the status, condition and legal capacity of persons, shall be binding upon the citizens of Puerto Rico, although they reside in a foreign country."

Pursuant to the laws of Puerto Rico that apply:

Contracts concerning a future inheritance are forbidden and, therefore, null and void. (31 LPRA § 3421). Accordingly, petitioner's waiver of his right to inherit from his father, contained in the 1974 Amendment, is void, inasmuch as the contract was signed, notarized and performed in Puerto Rico. Moreover, it would have been void even if signed elsewhere, because petitioner was a citizen of Puerto Rico and was subject to its laws. (31 LPRA § 9) The ruling of the Chancery Court that petitioner had waived his right to inherit from his father, is therefore, error.

The 1974 Amendment is void *ab initio* for each of the following reasons: 1. It had an illicit consideration and was, consequently, void and legally nonexistent (31 LPRA § 3432) and, 2. Because the future inheritance waiver was the principal objective of the 1974 Amendment, as determined by the Chancery Court, the contract could not be "substantially enforced" and was also void due to its reverse "savings clause" that provided for its nullity, if, for any reason, it could not be "substantially enforced", in which case the parties were to be returned to the positions held prior to the signing. The Chancery Court judgment that the 1974 Amendment was calid and enforceable, is therefore, error.

The 1972 Agreement became null and void. Its basic and principal obligation was to have an Initial Public Offering of the petitioner's entire ownership interest in the Goya Companies, within two years. The 27 years that have passed, make compliance impossible. A similar reverse "savings clause" mandates its cancellation in the event that it cannot be "substantially enforced". The Chancery Court's determination that the 1972 Agreement as amended by the 1974 Amendment was valid and enforceable was clearly, error.

The 1974 Amendment was invalid and legally nonexistent, for the further reason that it contained a Penalty Clause to award the successful party in any subsequent litigation between the parties, *on any matter,* twice their legal expenditures. That clause was illegal and unenforceable under the laws of Puerto Rico as well as New Jersey. It was based on the illicit and invalid Penalty Clause in a non-existent contract that the Chancery Court rendered two $6.9 million final judgments, one against the bankruptcy estate of the petitioner and the other against the petitioner, individually.

As shown above, the courts of New Jersey have both ignored and violated the laws which Congress, in its wisdom and within its authority, ordered to be the law for the former colony of Spain, Puerto Rico, which became an unincorporated territoy of the United States, pursuant to the Treaty of Paris of 1898. Under the Foracker Act, the Civil Code of Puerto Rico took effect on July 1, 1902, and has been the law of the island, with relatively little modification, since that time. It was the law that was in effect in 1921 when petitioner's parents married in Puerto Rico and a legal partnership of gains and acquest was created on the day of the marriage which would be the exclusive owner of all of the couples gains in assets, during their marriage, which under the laws of Puerto Rico was an economic and financial partnership, which common law marriages are not, as well as an intimate social partnership.

The decision of the courts below also violated an important federal statute that made citizens of the United States, citizens of Puerto Rico, after one year of residence there. (48 U.S.C. § 733a) The legislative history of that statute makes it indisputable that Congress knew what it was doing, and was well aware of the difference between residence and domicile, when it rejected H.R. 11610 which required three years of domicile in Puerto Rico for U. S. citizens to also be citizens of Puerto Rico, and on the recommendation of the governor of Puerto Rico that had been appointed by the President of the United States, of the Committee on Insular Affairs of the House of Representatives and the legislature and tax payers of Puerto Rico, H.R. 11846, which required one year of residence, not domicile, to become a citizen, enjoy the privileges of citizenship and be bound by its civil laws, was enacted into law for the government of Puerto Rico. Upon its enactment, it was inserted as Sec. 5a. of the Act of March 2, 1917 (Jones Act) during the 2nd. Session of the Sixty-Ninth Congress.

Being that petitioner's father was indisputably a citizen of Puerto Rico when he died there, he and his estate was bound by the family, forced heirship, partnership and other titles of the civil code of Puerto Rico. In the decisions below, the court disregarded the above, and other applicable laws that were extensively briefed, which, had they been applied would have resulted in an entirely different outcome. For those reasons alone, the petition for a writ of certiorari should be granted.

There is no question that New Jersey has wrongly intruded in the affairs of citizens and juridical entities of Puerto Rico by disregarding and violating the Puerto Rican civil code and its family and partnership laws and by refusing to give Full Faith and Credit to the well settled laws of Puerto Rico that have been the law of that island territory, since 1902, by Order of Congress, pursuant to which a partnership is gains and acquest is con-

stituted on the day of any marriage that takes place in Puerto Rico, or between citizens of Puerto Rico, unless there had been a duly executed pre-nuptial agreement, stating otherwise. By virtue of the Conjugal Partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and his wife, share and share alike, upon the dissolution of the marriage, 31 LPRA § 3621. Conjugal Partnership is a separate and distinct entity from the spouses that compose it. *Fernandez-Cerra v. Commercial Insurance Co. of Newark*, 344 F.Sup. 314 (1972). *Cruz Viera v. Registrador*, 1987, 118 D.P.R.. During the marriage the law to be applied to the Conjugal Partnership is the law of partnership of Puerto Rico, but after the partnership is dissolved by death or divorce, the applicable law is that governing the liquidation of property of the conjugal partnership. *Janer Vila v. Superior Court*, 1964, 90 P.R.R. 277, 281. Conjugal Partnership as recognized by civil law in Puerto Rico should be considered within the meaning of "partnership" in the Federal Internal Revenue Code, so that the spouse may derive disability under Social Security Law. *Carrasco v. Secretary of Health, Education and Welfare*, 628 F.2d 624 (1980).

The courts below further failed to give Full Faith and Credit to the laws governing the 1974 Amendment. Under Puerto Rican law, the contracts waiver of inheritance rights and its penalty of twice the amount of attorneys' fees and costs for any litigation between the parties, on any matter, irrespective on by whom the action was initiated, is illegal. *See*: 31 LPRA § 2370. Although the courts below did not give credit to that Puerto Rican law, in spite of the fact that the contract was one with petitioner who was a citizen of Puerto Rico and could not, as a mater of law, waive his right or execute a contract concerning his future inheritance, and moreover, was executed in Puerto Rico, including a specific provision that if it could not be "substantially enforced" it and all

it contained would be without force and effect with the parties returned to their status *ante*.

The consequences of the decision in this matter extend well beyond the hundreds of millions of dollars involved. It even extends beyond setting a precedent that will permit the impoverishment of many families by the misappropriation of the property of partnerships and juridical entities. The implications of this case will affect the millions of individuals who were married in civil law jurisdictions throughout the world, until the decisions of the courts below are finally overturned, at some future time at great cost, by an individual or group that is more resourceful and tenacious than the petitioner herein. This Honorable Court should, therefore, grant certiorari.

III. THE DISMISSAL OF THE BANKRUPTCY CASE VACATED THE JUDGMENTS AGAINST THE BANKRUPTCY ESTATE AND ITS JUDGMENT MUST BE GIVEN FULL FAITH AND CREDIT

Pursuant to 11 U.S.C. § 349(b)(2) and § 349(b)(3), Unless the court, for cause, orders otherwise, a dismissal of a bankruptcy case vacates any order, judgment or transfer affecting the bankruptcy estate and revests the property of the estate in the entity in which such property was vested immediately prior to the commencement of the bankruptcy case.

Inasmuch as all creditors of a debtor in bankruptcy must file their claims in the bankruptcy court, the judgment of the bankruptcy court that there were no existing creditors must be given Full Faith and Credit. Upon dismissal, the claims of petitioner, which had been property of the bankruptcy estate, revests to the petitioner, without debts or obligations, which the U.S. Bankruptcy Court held did not exist. It's ruling was not appealed.

CONCLUSION

For all of the above reasons, petitioner respectfully requests that this Honorable Court issue a Writ of Certiorari to review the decisions of the courts below.

Respectfully submitted,

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